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No. 02-127

In The
Supreme Court of the United States

JOSEPH MCGRATH, Warden;
BILL LOCKYER, Attorney General of California,

Petitioners,

v.

MICHAEL SU CHIA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court of Appeals erred in concluding that the exclusion of crucial and reliable evidence, in violation of due process, was an unreasonable application of clearly established federal law.

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Michael Su Chia, hereby opposes the Petition for a Writ of Certiorari by the State of California to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

Respondent adopts and incorporates by reference all opinions and orders below that are set forth in Appendices A-E to the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

On November 1, 1988, Michael Su Chia was convicted of two counts of first degree murder and one count of attempted murder, as well as counts of second degree robbery and conspiracy to commit robbery. Chia was not accused of being present when the murders occurred, but rather he was prosecuted as a co-conspirator, an aider and abettor, and an accomplice. *Chia v. Cambra*, 281 F.3d 1032, 1034 (9th Cir. 2002). Chia was sentenced to 25 years to life for each of the murder counts, nine years for the attempted murder, and two years for the special allegations, with the sentences to run consecutively.

The California Court of Appeal affirmed the conviction and the California Supreme Court denied review. Subsequently, Chia filed a petition for habeas corpus in the California Supreme Court, which denied the petition without explanation.

In 1997, Chia filed a petition for a writ of habeas corpus in the United States District Court for the Central District of California. The District Court denied this petition and Chia filed a timely appeal.

On February 7, 2002, the United States Court of Appeals for the Ninth Circuit reversed the District Court's judgment. The Court of Appeals concluded that Chia's due process rights had been violated because crucial testimony had been excluded from his trial and that "[t]he evidence is overwhelming that the statements were both reliable and crucial to Chia's defense." 281 F.3d at 1034. The Court of Appeals remanded the case to the District Court "with instructions to grant the writ of habeas corpus unless the State grants Michael Chia a new trial within a reasonable time." *Id.*

The State petitioned the Court of Appeals for a rehearing and a rehearing en banc. These requests were denied on April 23, 2002.

On May 21, 2002, in compliance with the order of the Court of Appeals, the District Court ordered that Chia be released unless he was "brought to retrial within sixty (60) days of the date this Judgment becomes final (plus any additional delay authorized under state law.)"

The State then filed motions for a stay in the United States Court of Appeals, in the Supreme Court, and in the California Superior Court. These motions were denied. However, on October 28, 2002, in response to the State's second application for a stay, this Court entered a stay of the trial, pending a determination of the petition for a writ of certiorari.

STATEMENT OF FACTS

Michael Su Chia maintains that he was wrongly convicted because crucial and reliable evidence was excluded from his trial. Chia's convictions stem from a Drug Enforcement Agency (DEA) sting operation that ended tragically. Two undercover DEA agents were killed when the targets of the sting decided to rob and murder the agents instead of going through with the drug deal. There is no dispute that Chia was not present when the murders occurred and that he did not participate in the shootings; he was convicted as a co-conspirator, an aider and abettor, and an accomplice. Three men – William Wei Wang, Frank Kow, and Mike Chen – were present when the murders occurred. Kow and Chen were killed in the resulting car chase and shootout; Wang was severely wounded, but survived and was convicted.

Chia's defense at trial, and today, is that he was not a co-conspirator or accomplice in the murders. Indeed, Chia has maintained all along that he tried to convince one of the shooters, Wang, out of the plot to kill the two undercover agents. The key evidence supporting Chia's defense are statements that Wang made to the police which were incriminating of Wang and exonerating of Chia. The trial court excluded the statements as hearsay. Chia argued on direct appeal and on habeas corpus that the exclusion of these statements violated due process because they were crucial evidence in his defense and reliable.

Specifically, after surviving a shootout with police and after his arrest, Wang made four statements to the police. The first statement was made to DEA agents before Wang was taken into surgery for treatment of nine gunshot wounds. The agents made clear that Wang understood

that he was in danger of death so that his statements would be admissible as a dying declaration if he did not survive the surgery. Wang said that he, Kow, and Chen had planned to rob the drug dealers and that they did not know that their intended victims were DEA agents. Wang said that he did not know of anyone other than himself, Kow, and Chen who was involved in the shootings. Wang admitted to shooting one of the agents three times with a revolver and admitted to providing a .45 caliber pistol for the robbery.

Wang's second statement was made to a Pasadena police officer later that day, after he came out of surgery. Wang again admitted that he, Kow, and Chen had planned to rob the "drug dealers" and that he shot two of the agents. Wang described the plans for the robbery in detail.

Wang's third statement was made to Pasadena police officers later that evening. The statement was taped and was admitted into evidence in Wang's trial as a prosecution exhibit and was played, in its entirety, to the jury. During this interview, the police officer asked Wang about Chia's involvement in the plot. Wang told the officer that Chia was not involved and, in fact, had urged Wang not to go through with the plot. The officer pressed Wang and he emphasized that Chia was not involved in the plan and was not going to get any drugs or money. Wang said that Chia was concerned that Chen and Kow might turn on Wang and kill him so that they could keep all the money for themselves. The investigator repeatedly asked about Chia's involvement and Wang consistently said that Chia played no role in devising or executing the plan. Wang said that he dropped Chia off at Kow's apartment, though Chia returned to the area of the murders out of fear that Chen and Kow might turn on Wang.

Wang's fourth and final statement was made to FBI agents two days after the shootings. Wang confessed that he planned to rob the "drug dealers" and that he knew that Kow intended to kill them. Wang said again that Chia was not a part of the plan and had told him not to go through with the plot. He also stated that when he spoke with Chia in the restaurant parking lot before Wang, Chen, and Kow went to meet with the "drug dealers," Wang told Chia to go home. Chia refused out of concern for Wang's safety. Wang also said that the handcuffs found in Chia's car belonged to Johnny Lee and that he did not know anything about the ski masks that were found there.

The prosecution never denied the accuracy of any of Wang's statements about what occurred, but instead relied on them as key evidence against Wang at his trial. The prosecution, however, successfully objected to Chia's attempts to introduce these statements as evidence in his trial. The trial judge concluded that Wang's statements were inadmissible hearsay and did not fit under the state-law exception for declarations against interest. The judge concluded that the statements were not reliable because it was common for members of a criminal conspiracy to try and shield one another from liability. The judge also found that the statements did not clearly exculpate Chia because Wang's statements corroborated Chia's earlier involvement in the events that culminated in the shootings. The trial judge said that *Chambers v. Mississippi*, 410 U.S. 284 (1973), was distinguishable because Wang's statements were unreliable and inculpatory of Chia.

Wang invoked his Fifth Amendment privilege against self-incrimination and refused to testify at Chia's trial. Chia was thus denied any use of Wang's statements in

which Wang described the plot and repeatedly said that Chia had tried to talk Wang out of going through with it.

Following his conviction, Chia's appeal and his habeas corpus petition have focused on whether the exclusion of Wang's statements violated due process. The United States Court of Appeals carefully reviewed each of the four separate statements by Wang and concluded that it was "persuade[d] . . . that Wang's statements were clearly both reliable and crucial to Chia's defense." 281 F.3d at 1037. The Court of Appeals further held that "[t]he trial court's conclusion that Wang's statements were inadmissible . . . was clear error and an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States." *Id.* at 1041.

ARGUMENT

THE SUPREME COURT SHOULD DENY THE PETITION FOR A WRIT OF CERTIORARI BECAUSE THE COURT OF APPEALS CORRECTLY FOUND THAT THE EXCLUSION OF CRUCIAL AND RELIABLE EVIDENCE VIOLATED DUE PROCESS AND THAT THE STATE COURT HAD UNREASONABLY APPLIED CLEARLY ESTABLISHED FEDERAL LAW

A. The Law Is Clearly Established, and There Is No Conflict Among the Circuits, that the Exclusion of Crucial and Reliable Evidence Violates Due Process

The issue presented in the habeas corpus petition is whether the state trial court violated Chia's due process

rights by preventing him from introducing several statements by William Wei Wang which demonstrate that Chia did not participate and, in fact, attempted to talk Wang out of the planned crime. The Court of Appeals correctly identified the issue: "If Wang's statements bear sufficient indicia of reliability and were crucial to Chia's defense, then it was error for the trial court to exclude them." 281 F.3d at 1034. The Court of Appeals correctly stated the law here: "It is clearly established federal law, as determined by the Supreme Court of the United States, that when a hearsay statement bears persuasive assurances of trustworthiness and is critical to the defense the exclusion of that statement may rise to the level of a due process violation. *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)." 281 F.3d at 1037.

Chambers had facts remarkably similar to this case. The defendant in *Chambers* was accused of murdering a police officer. At trial, Chambers attempted to call three witnesses who had heard another man, Gable McDonald, confess to the shooting shortly after it occurred. The trial judge excluded each of these witnesses from testifying on hearsay grounds. Additionally, Chambers called McDonald as a witness and elicited that McDonald had confessed to the crime, but after McDonald said on cross-examination that he recanted these statements, the trial judge refused to allow Chambers to re-examine McDonald as an adverse witness.

This Court held that the exclusion of the three witnesses from testifying when "coupled with the State's refusal to permit Chambers to cross-examine McDonald denied him a trial in accord with traditional and fundamental standards of due process." 410 U.S. at 302. The

Court focused on the exclusion of the out-of-court statements by the witnesses who had heard McDonald confess and said that the state court had violated Chambers' due process rights by denying use of this evidence. The Court explained that "each of McDonald's confessions was made spontaneously to a close acquaintance shortly after that murder occurred"; that "each [confession] was corroborated by some other evidence in this case"; and that the rationale for the penal interest exception to the hearsay rule applied to the confessions. *Id.* at 300-01. This Court thus concluded that "[t]he hearsay statements involved in this case were originally made and subsequently offered at trial under circumstances that provided considerable assurances of their reliability." *Id.* at 300.

The Court emphasized the importance of the right involved and declared:

> "Few rights are more fundamental than that of an accused to present witnesses in his own defense. . . . The testimony rejected by the trial court here bore persuasive assurances of trustworthiness and thus was well within the basic rationale of the exception for declarations against interest. That testimony was also critical of Chambers' defense. In these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice."

Id. at 302 (citations omitted). The Court expressly indicated that it was relying on clearly established principles of law and was not creating a new rule. The Court said that in concluding that the exclusion of the evidence

denied Chambers "a trial in accord with . . . due process, . . . we establish no new principle of constitutional law." *Id.*

Thus, the Court of Appeals in this case relied on clearly established law in holding that the exclusion of crucial and reliable evidence – as in *Chambers*, statements from another confessing to a crime and exculpating the defendant – violated due process. The State, in its petition for certiorari asserts that there is a "split in the circuits . . . about the nature of the 'rule' of *Chambers v. Mississippi.*" Petition for Writ of Certiorari, at 8. However, there is no split in the circuits over the basic holding of *Chambers* relied on by the Court of Appeals: the exclusion of crucial and reliable evidence denies due process. The State cites not one case, because there is not one, which disputes this principle which was the basis for the Court of Appeals decision.

Nor can it be disputed that the Court of Appeals was correct in describing this as "clearly established Federal law as determined by the Supreme Court of the United States." 281 F.3d at 1037. Subsequent to *Chambers*, this Court reaffirmed its holding and emphasized that this principle is clearly established. In *Lilly v. Virginia*, 527 U.S. 116, 130 (1999), this Court said: "Finally, in 1973, this Court endorsed the more enlightened view in *Chambers*, holding that the Due Process Clause affords criminal defendants the right to introduce into evidence third parties' declarations against penal interest – their confessions – when the circumstances surrounding the statement 'provide[s] considerable assurance of their validity.' Not surprisingly, most States have now amended their hearsay rules to allow the admission of such statements under against-penal-interest exception."

The Court of Appeals relied on *Chambers* solely for establishing this proposition and as "clearly established federal law" providing a basis for habeas corpus relief. 281 F.3d at 1037. Courts of Appeals throughout the country repeatedly restate and rely on the basic rule that the exclusion of crucial and reliable evidence violates due process. *See, e.g., Turpin v. Kassulke,* 26 F.3d 1392, 1396 (6th Cir. 1994); *United States v. DeVillio,* 983 F.2d 1185, 1190 (2d Cir. 1993); *Government of Virgin Islands v. Mills*, 956 F.2d 443, 446 (3d. Cir. 1993); *Cunningham v. Peters*, 941 F.2d 535, 539 (7th Cir. 1991); *United States v. Pizarro,* 717 F.2d 336, 349 (7th Cir. 1983).

The State in its Petition for Certiorari points to varying ways in which courts have phrased tests for implementing *Chambers v. Mississippi*. Petition for Writ of Certiorari, at 11-12. But these differences in phrasing do not amount to a conflict in the circuits because they are entirely consistent ways of saying the same thing. For example, the State's list of decisions begins by contrasting two cases. The State describes *DiBenedetto v. Hall*, 272 F.3d 1, 7 (1st Cir. 2001), *cert. denied sub nom., DiBenedetto v. Spencer*, 122 S.Ct. 1622 (2002), as holding "that the exclusion of evidence in extreme circumstances violates due process." The State next cites *United States v. DeVillio*, 983 F.2d 1185, 1190 (2d Cir. 1993), as announcing a "three-part test for trustworthiness requiring admission of statements that a) are made spontaneously to close friends shortly after the event, b) are corroborated by other evidence, and c) are self-incriminating and unquestionably against penal interest."

The fact that courts may state a principle at different levels of abstraction does not mean that there is a conflict among the circuits; nor does it deny that there is clearly

established law. Every single case cited by the State is completely consistent with the Court of Appeals' holding in this case: the exclusion of crucial and reliable evidence violates due process. Indeed, many of the cases cited by the State express exactly this proposition. Petition for Writ of Certiorari, at 11 ("*Chambers* requires admission of critical, exculpatory, and trustworthy evidence, *Turpin v. Kassulke*, 26 F.3d 1392, 1396 (6th Cir. 1994); . . . that *Chambers* requires admission of evidence that is highly relevant to a critical issue with adequate indicia of reliability, *Davis v. Zant*, 36 F.3d 1538, 1544 (11th Cir. 1994)").

Contrary to the State's assertion, this case does not present an issue concerning "the meaning of the 'clearly established' requirement in 28 U.S.C. §2254(d)(1)." Petition for Writ of Certiorari, at 13. The long list of cases cited by the State all stand for the proposition that the exclusion of crucial and reliable evidence violates due process and thus shows that there is no conflict among the circuits and that this legal proposition is clearly established federal law. The legal principle which was the basis for the Court of Appeals decision – that the exclusion of crucial and reliable evidence violates due process – is "clearly established" under any definition of that phrase. The Supreme Court repeatedly has articulated this principle and in doing so emphasized that it was not new, but well-established, and lower courts throughout the country have restated and relied on this basic rule.

B. The Court of Appeals Correctly Found that the State Court Had Unreasonably Applied Clearly Established Law in Excluding Crucial and Reliable Evidence

The Court of Appeals, of course, recognized that under the federal habeas corpus statute, a federal court may not

grant relief simply because it disagrees with a state court's decision. The Court of Appeals, relying on this Court's decision in *Williams v. Taylor*, 529 U.S. 362, 412 (2000), said that a federal court may grant a state prisoner's habeas petition only if the state court adjudication resulted in a decision that (1) was contrary to clearly established federal law, or (2) involved an unreasonable application of clearly established federal law, as determined by the Supreme Court of the United States. 281 F.3d at 1036. The Court of Appeals explained that this Court had found that the latter requirement is met if "a state court decision . . . correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular person's case." *Id.* at 1039.

The Court of Appeals then described its approach to determining if a state court decision is an "unreasonable application" of clearly established federal law. Contrary to the State's assertion in its Petition for Certiorari, the Court of Appeals approach is appropriately very deferential to state courts as is required by the habeas corpus statute. The Court of Appeals stated:

> "Under AEDPA, 'we must reverse a state court's decision as involving an 'unreasonable application' of clearly established federal law when our independent review of the legal question does not merely allow us ultimately to conclude that the petitioner has the better of two reasonable legal arguments, but rather leaves us with a 'firm conviction' that one answer, the one rejected by the court, was correct and the other, the application of the federal law that the court adopted, was erroneous – in other words that clear error occurred.'"

Id. at 1036-1037.

The State argues that circuits vary in how they phrase the test for what is an "unreasonable application" of clearly established federal law. Petition for Writ of Certiorari, at 14-15. However, the Court of Appeals explanation for why the state court decision was "unreasonable" would meet any of the articulations of the test identified by the State. In other words, the State describes differences among the circuits in phrasing what is an "unreasonable application," but the State fails to show that anything depends on the choice of approach in this case.

The Court of Appeals was very careful to explain why it concluded that the state court decision was "unreasonable." The Court said that "[o]n the paramount issue of reliability . . . , the self-inculpatory nature of Wang's statements weigh in favor of admission. The very words in this statement that exculpate Chia are highly inculpatory of Wang. . . . Self-inculpatory statements have long been recognized as bearing strong indicia of reliability." *Id.* at 1037.

Wang's statements are particularly reliable because he both incriminated himself, and two others, while exonerating Chia of any involvement. The statement was thus very much against Wang's penal interest and thus trustworthy. As the Court of Appeals explained:

> "On the paramount issue of reliability . . . , the self-inculpatory nature of Wang's statements weigh in favor of admission. The very words in this statement that exculpate Chia are highly inculpatory of Wang. Wang said that after he informed Chia of the plot, Chia tried to talk him out of it. . . . The inculpatory force of this statement with respect to Wang is obvious, and indeed the government conceded at oral argument that

> the very words, 'he told me don't do it,' at once inculpate Wang and exculpate Chia."

Id. at 1037-1038.

The reliability of Wang's statements is enhanced by their corroboration by all of the other evidence. The Court of Appeals noted that "Wang's description of his movements preceding the shootings was consistent with his prior statements to law enforcement officers and was consistent with the independent observations of DEA agents." *Id.* Perhaps the strongest indication of the reliability of Wang's statements is the fact that the prosecution relied on them and introduced them as evidence at Wang's trial.

The Court of Appeals concluded: "Our analysis shows that Wang's statements bear compelling indicia of reliability. The trial court engaged in a classic example of what *Chambers* prohibits: '[W]here constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.'" *Id.*, quoting *Chambers v. Mississippi*, 410 U.S. at 302.

Moreover, the Court of Appeals found that the trial court acted unreasonably in concluding that Wang's statements did not help the defense. The Court explained: "[T]he trial judge made the decision that Wang's statements did not clearly help the defense. We find this conclusion to be unreasonable. Wang stated that Chia told him not to do it and that Chia was not involved in furthering or encouraging the crime. These statements are clearly helpful to Chia. If believed by the jury, they exonerate Chia." *Id.* at 1040.

Thus, the Court of Appeals "conclude[d] that Wang's four statements were both reliable and crucial to the defense." 281 F.3d at 1041. The Court emphasized that its careful review compelled the conclusion that "[t]he trial court's conclusion that Wang's statements were inadmissible under *Chambers* was clear error and an unreasonable application of clearly established Federal law as determined by the United States Supreme Court." *Id.*

This is exactly the type of analysis that this Court has prescribed in determining what is an "unreasonable application" of clearly established federal law in cases such as *Williams v. Taylor*, 529 U.S. at 410-411. The Court of Appeals did not substitute its judgment for the state court, it deferred to the state court, and it ruled in favor of the habeas petitioner solely because the state court decision was objectively unreasonable; the Court stressed that it had a firm conviction that the state court decision was clearly erroneous. The Court of Appeals stated: "The evidence is overwhelming that the statements were both reliable and crucial to Chia's defense. We are left with a definite and firm conviction that a mistake was committed and that Chia's fundamental due process rights were violated when the trial court excluded Wang's statements." *Id.* at 1034.

The State argues that there are factual differences between this case and *Chambers v. Mississippi*. Petition for Writ of Certiorari, at 17-18. But the similarities are striking and far more persuasive. Both *Chambers* and this case involved state trial courts excluding evidence that was very important to showing the defendant's innocence; in both cases, the excluded statements involved someone else confessing to the crime. In this case, the confession included repeated statements that Chia had no involvement in the

plot which lead to the murders. In both *Chambers* and this case, there were strong indications of the reliability of the excluded statements; in each instance, the statements were against penal interest and in each, the statements were consistent with all of the other evidence in the case.

Nor are the State's attempted distinctions of *Chambers* persuasive. The State argues, for example, that "apparently unlike the defendant in *Chambers,* Chia was not relegated to hearsay as the only means of presenting the evidence. Nothing prevented Chia from testifying directly about his own conduct; he did not need to rely upon Wang's hearsay statements about it to produce that information to the jury." Petition for Writ of Certiorari, at 18. Besides Chia having a constitutional right to refuse to testify, Chia's self-serving denial would not have had the same weight or effect as Wang's repeated statements that Chia had no involvement in the plot or the murders. As in *Chambers*, the excluded evidence was crucial and reliable and thus the Court of Appeals was correct in concluding that the state court decision was an unreasonable application of clearly established federal law.

Chia's claim is based on the firmly established right of a criminal defendant to present key evidence in his defense. *See, e.g., In re Oliver*, 333 U.S. 257, 273 (1948) (right to call witnesses is a fundamental right); *see also, Morrissey v. Brewster*, 408 U.S. 471, 488 (1967). No matter how the test for habeas corpus is formulated, the State violated Chia's right by denying him use of crucial, reliable testimony. This case, therefore, does not present any important issues concerning the meaning of the habeas corpus

statute which warrants the granting of the petition for a writ of certiorari.

CONCLUSION

For the foregoing reasons, Michael Su Chia urges that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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